IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.2291 of 2007
Date of decision 20 .2.2007

Punjab State Agricultural Marketing Board and another
.. petitioners

Versus

State of Punjab and another .. Respondents

CORAM: HON'BLE MR. JUSTICE M.M. KUMAR
HON'BLE MR. JUSTICE RAJESH BINDAL

PRESENT: Mr.Rohit Gupta , Advocate for the petitioners

M.M.Kumar, J.

This order shall dispose of Civil Writ Petition Nos. 2291 to 2294 of 2007 as common question of law and fact is involved in all these petitions. For the purposes of this order, the facts are being taken from CWP No. 2291 of 2007.

The Punjab State Agricultural Marketing Board has approached this Court by filing the instant petition under Article 226 of the Constitution with a prayer for quashing order dated 3.4.2006 (Annexure P.4) passed by the Financial Commissioner (Development) and Principal Secretary to Government of Punjab, Department of Agriculture, respondent no.1. The Financial Commissioner has held that M/s Misha Exports, respondent no.2, is not assessable to the market fee and Rule 29 (8) of the Punjab Agricultural Produce Market (General) Rules, 1962 (for brevity 'the Rules') is not attracted in the present case.

Brief facts of the case as emerge from the impugned order are that an assessment order was passed on 15.5.2002 in respect of transactions conducted by firm- respondent no.2 during the year 1998-99. The Assessing

Authority assessed the market fee at Rs. 52,947.34 P. and same amount as RDF as payable by the respondent and also imposed penalty of an equal amount with interest @ 18 percent which has been calculated at Rs. 28,591.00. The total amount computed was Rs. 1,87,432.68P.. On 3.6.2002 a demand notice was issued by the petitioner- Committee to the firm -respondent no.2 for depositing the afore-mentioned amount on or before 17.6.2002 failing which it was to be recovered as arrears of land revenue. Feeling aggrieved, the firm respondent no.2 filed an appeal before the Appellate Authority under Rule 31(13) of the Rules. The appeal was dismissed and thereafter the firm respondent no.2 filed a revision petition before the Financial Commissioner. The Financial Commissioner after hearing both the parties accepted the revision petition by observing as under:

> "... It is an admitted case of the petitioner firm that the paddy was purchased from outside the State of Punjab and brought within the notified market area of Market Committee, Amritsar. All the documents produced by the petitioner before this Court also clearly show that the rice came from outside the State. These records were shown by the petitioner to the Assessing Authority as well, as it is recorded in its orders dated 15.5.02 that the firm produced the records before it on 6.12.2000. Further, this contention has not been disputed by the respondent Board, which has based its defence of the Assessment Order entirely on the technical and legal application of Rule 29(8) of the Punjab Agricultural Produce Markets (General) Rules, 1962.

It is my considered view that the application of any rule which "deems" that an event has occurred, must be restricted to a situation in which any alternative and firm evidence to the contrary , which shows that the event as it actually occurred, is not forthcoming. This is not the case in the instant petition before the Court. In a case where the documents clearly show that the rice which has attracted an assessment of Mandi fees/ RDF was purchased outside the limits of the Market Committee which has imposed the assessment, any application of Rule 29 (8) clearly reduces the entire exercise of imposition and collection of fees to a level of absurdity which cannot be tolerated.

For the above reasons, this petition deserves to be allowed. It is accordingly allowed and the order dated 27.1.2005 of the Deputy General Manager, Punjab Mandi Board and the assessment order dated 15.5.2002 passed by the Assessing authority of Market Committee, Amritsar are set aside."

Mr. Rohit Gupta, learned counsel for the petitioner has submitted that Rule 29(8) of the rules is squarely applicable and the Financial Commissioner has committed grave error in law by holding that the same is inapplicable. According to the learned counsel once it is proved that the agricultural produce have entered the market area of Amritsar then numerous presumptions follows i.e. the agreement of sale or purchase has been entered into the market area; agricultural produce is weighed and delivered in the said area. He has also produced before us the invoices and

receipts showing that the firm respondent no.2 has purchased paddy from Brailley and brought it in the market area of Amritsar which has been subjected to further processes.

After hearing learned counsel, we regret our inability to accept the submissions made by him. It would be apposite to notice at this stage the provisions of Rule 29(8) of the Rules which reads as under:

> " 29. Levy and collection of fee on the sale and purchase of agricultural produce.
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> xx xx xx xx xx
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> (8) For the purpose of this Rule agricultural produce shall be deemed to have been brought or sold in a Notified Market Committee:
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> a) if the agreement of sale or purchase thereof is entered into the said area; or
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> b) If in pursuance of the agreement of sale of purchase the agricultural produce is weighed in the said area; or
>
> c) If in pursuance of the agreement of sale or purchase the agricultural produce is delivered in the said area to the purchasers or to some other person on behalf of the purchaser.
>
> d) If the agricultural produce, sold or brought otherwise than in pursuance to an agreement of sale or purchase and is delivered in the said area to the purchaser or to some other person on behalf of the purchaser."

We repeatedly asked learned counsel for the petitioner by referring to the receipt and invoices as to whether the delivery of the

agricultural produce took place at Brailley or at Amritsar. It could not be disputed that the paddy was purchased, weighed and delivered at Brailley. There is nothing on record to conclude that any of the basic features contemplated by Rule 29(8) of the Rules is present in the instant case. There is no agreement of sale or purchase which might have been entered into the market area. The agricultural produce is neither weighed nor delivered in the market area.

We are further of the view that even the provisions of Section 23 of the Punjab Agricultural Produce Markets Act, 1961 do not take into its sweep the facts situation present in the instant case. Section 23 of the Act reads as under:

> "23. Levy of Fees. A Committee shall subject to rules as may be made by the State Government in this behalf levy on ad valorem basis;
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> i) Fees on the agricultural produce brought or sold by a licencee in the Notified Market Area at a rate not exceeding two rupees for every one hundred rupees; and
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> ii) also additional fees on the agricultural produce when sold by a producer to a licencee in the notified Market Area at a rate not exceeding one rupees for every one hundred rupees.
>
> Provided that-
>
> a) No fees shall be leviable in respect of any transaction in which delivery of the agricultural produce brought or sold is not actually made; and
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> b) A fee shall be leviable only on the parties to a transaction in which delivery is actually made."

A perusal of the afore-mentioned provision makes it patently clear that if no fee is levied in respect of a transaction in which delivery of the agricultural produce brought was sold is not actually made. In the present case, the paddy has been purchased, weighed and delivery taken in Brailley which is outside the market area. Therefore, we find that the view taken by the Financial Commissioner is not open to any legal infirmity and the same is upheld.

For the reasons afore-mentioned all the four petitions fail and the same are dismissed.

(M.M.Kumar)
Judge

(Rajesh Bindal)
Judge

20.2.2007
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